

**VOLUME 34 INDEX**  
**TITLE INDEX**

*Lead Articles*

RESISTING ANTI-INTELLECTUALISM AND PROMOTING LEGAL LITERACY <i>Leonard J. Long</i> . . . . .	1
STANDING AND SPEAKING CONSTITUTIONAL TRUTH TO LOCAL POWER REGARDING UNDOCUMENTED IMMIGRANT RESIDENTS DWELLING WITH WE THE PEOPLE OF THE UNITED STATES <i>L. Darnell Weeden</i> . . . . .	55
THE STANDARD OF REVIEW <u>DOES</u> MATTER: EVIDENCE OF JUDICIAL SELF- RESTRAINT IN THE ILLINOIS APPELLATE COURT <i>Timothy J. Storm</i> . . . . .	73
THE MISSOURI WORKERS' COMPENSATION LEGAL ADVISOR SYSTEM: CAN IT BE RESURRECTED UNDER THE NEW LAW? <i>Michael Moroni</i> . . . . .	117
STONERIDGE INVESTMENT PARTNERS, LLC v. SCIENTIFIC-ATLANTA, INC.: THE EVISCERATION OF INVESTOR PROTECTION <i>William A. Gregory and Sherri Johnson</i> . . . . .	251
PREVIOUSLY TAXED PROPERTY CREDIT AND THE 2035(B) GROSS UP <i>Kelly A. Moore</i> . . . . .	275
TOWARD A NEW STANDARD FOR THE ADMISSION OF EXPERT EVIDENCE IN ILLINOIS: A CRITIQUE OF THE <i>FRYE</i> GENERAL ACCEPTANCE TEST AND AN ARGUMENT FOR THE ADOPTION OF <i>DAUBERT</i> <i>Paul A. Rodrigues</i> . . . . .	289
THE UNWISE AND UNCONSTITUTIONAL HATCH ACT: WHY STATE AND LOCAL GOVERNMENT EMPLOYEES SHOULD BE FREE TO RUN FOR PUBLIC OFFICE <i>Jason C. Miller</i> . . . . .	313
PRESIDENT OBAMA'S POLICY AGENDA IN THE SUPREME COURT: WHAT WE KNOW SO FAR FROM THE OFFICE OF THE SOLICITOR GENERAL'S SERVICE AS AMICUS CURIAE <i>Karen Swenson</i> . . . . .	359
THE MAKING OF THE SUPREME COURT'S FREE EXERCISE CLAUSE JURISPRUDENCE: LESSONS FROM THE BLACKMUN AND POWELL PAPERS IN <i>BOWEN V. ROY</i> <i>Paul E. McGreal</i> . . . . .	469

EXAMINING THE EFFECTS OF THE <i>DAUBERT</i> TRILOGY ON EXPERT EVIDENCE PRACTICES IN FEDERAL CIVIL COURT: AN EMPIRICAL ANALYSIS <i>David M. Flores, James T. Richardson and Mara L. Merlino . . .</i>	533
AT THE BRINK OF FREE AGENCY: CREATING THE FOUNDATION FOR THE MESSERSMITH-McNALLY DECISION – 1968–1975 <i>Ed Edmonds . . . . .</i>	565
IN THE WEEDS: HOMEOWNERS FALLING BEHIND ON THEIR MORTGAGES, LENDERS PLAYING THE FORECLOSURE GAME, AND CITIES LEFT PAYING THE PRICE <i>Kristin M. Pinkston . . . . .</i>	621
DUMB AND DUMBER: RECKLESS ENCOURAGEMENT TO RECKLESS WRONGDOERS <i>Daniel G. Moriarty . . . . .</i>	647
A DEDICATION TO SERVICE: AN INTRODUCTION TO ACTING DEPUTY ATTORNEY GENERAL GARY G. GRINDLER’S COMMENCEMENT ADDRESS <i>Lucian E. Dervan . . . . .</i>	797
SURVEY OF ILLINOIS LAW: CIVIL PROCEDURE <i>Timothy J. Chorvat and Christine P. Benavente . . . . .</i>	807
SURVEY OF ILLINOIS LAW: ELDER LAW <i>Lee Beneze, Enid Kempe, Heather McPherson, and Martin W. Siemer . . . . .</i>	855
SURVEY OF ILLINOIS LAW: EMPLOYMENT LAW <i>Debra L. Stegall, Kevin J. Luther, Patrick D. Cloud, Natalie DeLong, Brian M. Smith and James M. Thompson . . . . .</i>	903
SURVEY OF ILLINOIS LAW: ENVIRONMENTAL LAW <i>Kyle Rominger, Jane McBride, William J. Anaya, Robert A. McKenzie, &amp; Eugene P. Schmittgens . . . . .</i>	1003
SURVEY OF ILLINOIS LAW: HEALTHCARE LAW <i>W. Eugene Basanta, Robert John Kane, Rick L. Hindmand, Keith E. Emmons, Brian J. McKenna, and Nancy K. McKenna .</i>	1033
SURVEY OF ILLINOIS LAW: INSURANCE LAW <i>Kelly Izzo . . . . .</i>	1077
SURVEY OF ILLINOIS LAW: NEW FREEDOM OF INFORMATION ACT— PEEKING BEHIND THE PAPER CURTAIN <i>Steven Helle . . . . .</i>	1089
SURVEY OF ILLINOIS LAW: WORKERS’ COMPENSATION <i>Brad A. Elward . . . . .</i>	1107

*Comments*

INDECISIVENESS IN COMPENSATING POST TRAUMATIC STRESS DISORDER: WHERE DOES ILLINOIS LEAVE FIRST RESPONDERS? <i>Nicholas B. Haynes</i> . . . . .	151
IS IT TIME? REFORM OF “DON’T ASK, DON’T TELL” AND ARTICLE 125 OF THE UNIFORM CODE OF MILITARY JUSTICE <i>Levi Bennett</i> . . . . .	175
CURB YOUR IMMUNITY: THE IMPROPER EXPANSION OF GOOD SAMARITAN PROTECTION IN ILLINOIS <i>Ben Bridges</i> . . . . .	373
A DIGNIFIED DEATH? DON’T FORGET ABOUT THE PHYSICALLY DISABLED AND THOSE NOT TERMINALLY ILL: AN ANALYSIS OF PHYSICIAN-ASSISTED SUICIDE LAWS <i>Cyndi Bollman</i> . . . . .	395
LOOKING BEYOND <i>LOPEZ</i> : ENFORCING THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT UNDER THE COMMERCE CLAUSE <i>Laura Barke</i> . . . . .	703
EARLY RETIREMENT PAYMENTS UNDER TENURE AND FICA TAXES: TRANSFER OF A PROPERTY RIGHT OR JUST ANOTHER PAYDAY? <i>Carson Maricle</i> . . . . .	727

*Casenotes*

WHEN WHAT YOU DON’T KNOW CAN HURT YOU: THIRD PARTY LIABILITY FOR FRAUDULENT MISREPRESENTATION IN NON-COMMERCIAL SETTINGS AFTER <i>DOE V. DILLING</i> , 888 N.E.2D 24 (ILL. 2008) <i>Laura Barke</i> . . . . .	201
POST-EMPLOYMENT RESTRICTIVE COVENANTS: ILLUSORY IN ILLINOIS? ADDRESSING THE IMPLICATIONS OF <i>BROWN AND BROWN, INC. V. MUDRON</i> , 887 N.E.2D 437 (ILL. APP. CT. 2008) <i>Timothy James O’Hern</i> . . . . .	227
ASSISTING IN PERSECUTION: ANALYZING THE DECISION IN <i>NEGUSIE V. GONZALES</i> , 231 F. APP’X 325 (5TH CIR. 2007) <i>Mark L. Philipp</i> . . . . .	417
THE INVESTORS WEREN’T TRICKED, BUT HOW WERE THEY TREATED? THE SEVENTH CIRCUIT’S NEW DEFINITION OF FIDUCIARY DUTY IN <i>JONES V. HARRIS ASSOCIATES, L.P.</i> , 527 F.2D 923 (7TH CIR. 2008) <i>Leslie M. Warren</i> . . . . .	445

CLARIFYING ‘KING ARTHUR’S COURT:’ MAKING SENSE OF THE COLLATERAL SOURCE RULE IN ILLINOIS AFTER <i>WILLS v. FOSTER</i> , 892 N.E.2D 1018 (ILL. 2008) <i>Ben Bridges</i> . . . . .	747
SUBSTANCE OVER FORM: REFINEMENT OF THE UNITARY BUSINESS DOCTRINE IN <i>MEADWESTVACO CORP. v. ILL. DEP’T OF REVENUE</i> , 128 S. CT. 1498 (2008) <i>Levi Bennett</i> . . . . .	773

---

### CONTRIBUTOR INDEX

Barke, Laura, <i>Looking Beyond Lopez: Enforcing the Sex Offender Registration and Notification Act Under the Commerce Clause</i> . .	703
Barke, Laura, <i>When What You Don’t Know Can Hurt You: Third Party Liability for Fraudulent Misrepresentation in Non-commercial Settings After Doe v. Dilling</i> , 888 N.E.2d 24 (Ill. 2008) . . . . .	201
Basanta, W. Eugene, Robert John Kane, Rick L. Hindmand, Keith E. Emmons, Brian J. McKenna, and Nancy K. McKenna, <i>Survey of Illinois Law: Healthcare Law</i> . . . . .	1033
Beneze, Lee, Enid Kempe, Heather McPherson, and Martin W. Siemer, <i>Survey of Illinois Law: Elder Law</i> . . . . .	855
Bennett, Levi, <i>Is It Time? Reform of “Don’t Ask, Don’t Tell” and Article 125 of the Uniform Code of Military Justice</i> . . . . .	175
Bennett, Levi, <i>Substance Over Form: Refinement of the Unitary Business Doctrine in MeadWestvaco Corp. v. Ill. Dep’t of Revenue</i> , 128 S. Ct. 1498 (2008) . . . . .	773
Bollman, Cyndi, <i>A Dignified Death? Don’t Forget About the Physically Disabled and Those Not Terminally Ill: An Analysis of Physician- Assisted Suicide Laws</i> . . . . .	395
Bridges, Ben, <i>Clarifying ‘King Arthur’s Court:’ Making Sense of the Collateral Source Rule in Illinois After Wills v. Foster</i> , 892 N.E.2d 1018 (Ill. 2008) . . . . .	747
Bridges, Ben, <i>Curb Your Immunity: The Improper Expansion of Good Samaritan Protection in Illinois</i> . . . . .	373
Chorvat, Timothy J. and Christine P. Benavente, <i>Survey of Illinois Law: Civil Procedure</i> . . . . .	807
Dervan, Lucian E., <i>A Dedication to Service: An Introduction to Acting Deputy Attorney General Gary G. Grindler’s Commencement Address</i> . . . . .	797

Edmonds, Ed, <i>At the Brink of Free Agency: Creating the Foundation for the Messersmith-McNally Decision – 1968–1975</i> . . . . .	565
Elward, Brad A., <i>Survey of Illinois Law: Workers’ Compensation</i> . . .	1107
Flores, David M., James T. Richardson and Mara L. Merlino, <i>Examining the Effects of the Daubert Trilogy on Expert Evidence Practices in Federal Civil Court: An Empirical Analysis</i> . . . . .	533
Gregory, William A. and Sherri Johnson, Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.: <i>The Evisceration of Investor Protection</i> . . . . .	251
Haynes, Nicholas B., <i>Indecisiveness in Compensating Post Traumatic Stress Disorder: Where Does Illinois Leave First Responders?</i> .	151
Helle, Steven, <i>Survey of Illinois Law: New Freedom of Information Act—Peeking Behind the Paper Curtain</i> . . . . .	1089
Izzo, Kelly, <i>Survey of Illinois Law: Insurance Law</i> . . . . .	1077
Long, Leonard J., <i>Resisting Anti-Intellectualism and Promoting Legal Literacy</i> . . . . .	1
Maricle, Carson, <i>Early Retirement Payments Under Tenure and FICA Taxes: Transfer of a Property Right or Just another Payday?</i> . .	727
McGreal, Paul E., <i>The Making of the Supreme Court’s Free Exercise Clause Jurisprudence: Lessons from the Blackmun and Powell Papers in Bowen v. Roy</i> . . . . .	469
Miller, Jason C., <i>The Unwise and Unconstitutional Hatch Act: Why State and Local Government Employees Should be Free to Run for Public Office</i> . . . . .	313
Moore, Kelly A., <i>Previously Taxed Property Credit and the 2035(b) Gross Up</i> . . . . .	275
Moriarty, Daniel G., <i>Dumb and Dumber: Reckless Encouragement to Reckless Wrongdoers</i> . . . . .	647
Moroni, Michael, <i>The Missouri Workers’ Compensation Legal Advisor System: Can It Be Resurrected Under the New Law?</i> . . . . .	117
O’Hern, Timothy James, <i>Post-Employment Restrictive Covenants: Illusory in Illinois? Addressing the Implications of Brown and Brown, Inc. v. Mudron, 887 N.E.2d 437 (Ill. App. Ct. 2008)</i> . . . . .	227
Philipp, Mark L., <i>Assisting in Persecution: Analyzing the Decision in Negusie v. Gonzales, 231 F. App’x 325 (5th Cir. 2007)</i> . . . . .	417
Pinkston, Kristin M., <i>In the Weeds: Homeowners Falling Behind On Their Mortgages, Lenders Playing the Foreclosure Game, and Cities Left Paying the Price</i> . . . . .	621
Rodrigues, Paul A., <i>Toward a New Standard for the Admission of Expert Evidence in Illinois: A Critique of the Frye General Acceptance Test and an Argument for the Adoption of Daubert</i> . . . . .	289

Rominger, Kyle, Jane McBride, William J. Anaya, Robert A. McKenzie & Eugene P. Schmittgens, <i>Survey of Illinois Law:</i> <i>Environmental Law</i> . . . . .	1003
Stegall, Debra L., Kevin J. Luther, Patrick D. Cloud, Natalie DeLong, Brian M. Smith and James M. Thompson, <i>Survey of Illinois Law:</i> <i>Employment Law</i> . . . . .	903
Storm, Timothy J., <i>The Standard of Review <u>Does</u> Matter: Evidence of</i> <i>Judicial Self-Restraint in the Illinois Appellate Court</i> . . . . .	73
Swenson, Karen, <i>President Obama's Policy Agenda in the Supreme Court:</i> <i>What We Know So Far From the Office of the Solicitor General's</i> <i>Service as Amicus Curiae</i> . . . . .	359
Warren, Leslie M., <i>The Investors Weren't Tricked, but How Were They</i> <i>Treated? The Seventh Circuit's New Definition of Fiduciary Duty</i> <i>in Jones v. Harris Associates, L.P., 527 F.2d 923 (7th Cir. 2008)</i> . . . . .	445
Weeden, L. Darnell, <i>Standing and Speaking Constitutional Truth to</i> <i>Local Power Regarding Undocumented Immigrant Residents Dwelling</i> <i>with We the People of the United States</i> . . . . .	55

### TOPIC INDEX

#### CIVIL PROCEDURE:

The Standard of Review <u>Does</u> Matter: Evidence of Judicial Self-Restraint in the Illinois Appellate Court . . . . .	73
Clarifying 'King Arthur's Court:' Making Sense of the Collateral Source Rule in Illinois After <i>Wills v. Foster</i> , 892 N.E.2d 1018 (Ill. 2008) . . . . .	747
Survey of Illinois Law: Civil Procedure . . . . .	807

#### CONTRACT LAW:

When What You Don't Know Can Hurt You: Third Party Liability for Fraudulent Misrepresentation in Non-commercial Settings After <i>Doe v. Dilling</i> , 888 N.E.2d 24 (Ill. 2008) . . . . .	201
--	-----

#### CONSTITUTIONAL LAW:

The Unwise and Unconstitutional Hatch Act: Why State and Local Government Employees Should be Free to Run for Public Office . . . . .	313
The Making of the Supreme Court's Free Exercise Clause Jurisprudence: Lessons from the Blackmun and Powell Papers in <i>Bowen v. Roy</i> . . . . .	469

#### CORPORATE LAW:

<i>Stoneridge Investment Partners, LLC v. Scientific-Atlanta, Inc.</i> : The Evisceration of Investor Protection . . . . .	251
---	-----

## CRIMINAL LAW:

- Looking Beyond *Lopez*: Enforcing the Sex Offender Registration and Notification Act Under the Commerce Clause . . . . . 703

## ELDER LAW:

- Survey of Illinois Law: Elder Law . . . . . 855

## EMPLOYMENT LAW:

- Post-Employment Restrictive Covenants: Illusory in Illinois? Addressing the Implications of *Brown and Brown, Inc. v. Mudron*, 887 N.E.2d 437 (Ill. App. Ct. 2008) . . . . . 227
- Survey of Illinois Law: Employment Law . . . . . 903

## ENVIRONMENTAL LAW:

- Survey of Illinois Law: Environmental Law . . . . . 1003

## EVIDENCE:

- Toward a New Standard for the Admission of Expert Evidence in Illinois: A Critique of the Frye General Acceptance Test and an Argument for the Adoption of *Daubert* . . . . . 289
- Examining the Effects of the Daubert Trilogy on Expert Evidence Practices in Federal Civil Court: An Empirical Analysis . . . . . 533

## FREEDOM OF INFORMATION:

- Survey of Illinois Law: New Freedom of Information Act—Peeking Behind the Paper Curtain . . . . . 1089

## HEALTHCARE LAW:

- A Dignified Death? Don't Forget About the Physically Disabled and Those Not Terminally Ill: An Analysis of Physician-Assisted Suicide Laws . . . . . 395
- Survey of Illinois Law: Healthcare Law . . . . . 1033

## IMMIGRATION LAW:

- Standing and Speaking Constitutional Truth to Local Power Regarding Undocumented Immigrant Residents Dwelling with We the People of the United States . . . . . 55
- Assisting in Persecution: Analyzing the Decision in *Negusie v. Gonzales*, 231 F. App'x 325 (5th Cir. 2007) . . . . . 417

## INSURANCE LAW:

Survey of Illinois Law: Insurance Law . . . . . 1077

## INVESTMENT LAW:

The Investors Weren't Tricked, but How Were They Treated? The Seventh Circuit's New Definition of Fiduciary Duty in *Jones v. Harris Associates, L.P.*, 527 F.2d 923 (7th Cir. 2008) . . . . . 445

## JUDICIAL DECISIONMAKING:

Resisting Anti-Intellectualism and Promoting Legal Literacy . . . . . 1

## MILITARY LAW:

Is It Time? Reform of "Don't Ask, Don't Tell" and Article 125 of the Uniform Code of Military Justice . . . . . 175

## MISCELLANEOUS:

President Obama's Policy Agenda in the Supreme Court: What We Know So Far From the Office of the Solicitor General's Service as Amicus Curiae . . . . . 359

A Dedication to Service: An Introduction to Acting Deputy Attorney General Gary G. Grindler's Commencement Address . . . . . 797

## REAL ESTATE:

In the Weeds: Homeowners Falling Behind On Their Mortgages, Lenders Playing the Foreclosure Game, and Cities Left Paying the Price . . . . . 621

## SPORTS LAW:

At the Brink of Free Agency: Creating the Foundation for the Messersmith-McNally Decision – 1968–1975 . . . . . 565

## TAX LAW:

Previously Taxed Property Credit and the 2035(b) Gross Up . . . . . 275

Early Retirement Payments Under Tenure and FICA Taxes: Transfer of a Property Right or Just Another Payday? . . . . . 727

Substance Over Form: Refinement of the Unitary Business Doctrine in *MeadWestvaco Corp. v. Ill. Dep't of Revenue*, 128 S. Ct. 1498 (2008) . . . . . 773



**TORT LAW:**

Curb Your Immunity: The Improper Expansion of Good Samaritan  
Protection in Illinois ..... 373  
Dumb and Dumber: Reckless Encouragement to Reckless Wrongdoers 647

**WORKERS' COMPENSATION LAW:**

The Missouri Workers' Compensation Legal Advisor System: Can It Be  
Resurrected Under the New Law? ..... 117  
Indecisiveness in Compensating Post Traumatic Stress Disorder: Where  
Does Illinois Leave First Responders? ..... 151  
Survey of Illinois Law: Workers' Compensation ..... 1107

